Commission also seeks comment on whether the rules should incorporate any requirements of notice to interested state commissions of the consummation of financing by nonutility subsidiaries of registered holding companies.

The Commission also proposes to rescind the Statements of Policy. The Statements of Policy were formulated by the Commission's staff nearly forty years ago to specify the terms to be included in new issues of first mortgage bonds and preferred stock. As the securities markets have developed, the Commission has found that the Statements of Policy have become anachronistic and hinder the ability of registered companies to raise capital. As a result, the Commission has permitted more and more deviations on a case-by-case basis from the requirements of the Statements of Policy.[19] In addition, in 1992, for similar reasons, the Commission eliminated compliance with the Statements of Policy as a condition to use of Rule 52.[20] The Commission believes that it is no longer appropriate to require specific terms to be included in securities issues, and requests comment on this proposed rescission.

Conclusion

The Commission believes that the registered holding-company systems should have a greater ability to engage in routine financings without the regulatory burden of prior Commission authorization, and that this may be done without jeopardizing the interests the Act is designed to protect. The rule amendments proposed today are intended to accomplish this purpose.

Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the proposed amended rules will not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, may be obtained from Bonnie Wilkinson, Office of Public Utility Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

Costs and Benefits

It appears that amended rules 45 and 52 will substantially decrease regulatory compliance costs for the registered holding companies.

Paperwork Reduction Act

The proposed amendment is subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 79 *et seq.*) and will be submitted to the Office of Management and Budget for approval.

Statutory Authority

The Commission is proposing to amend rules 45 and 52 pursuant to sections 6, 9, 12 and 20 of the Act.

List of Subjects in 17 CFR Part 250

Electric utilities, Holding companies, Natural gas, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rules

For the reasons set forth in the preamble, Part 250 of chapter II, title 17, of the Code of Federal Regulations is proposed to be amended as follows:

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

1. The authority citation for part 250 continues to read as follows.

Authority: 15 U.S.C. 79c, 79f(b), 79i(c)(3), 79t, unless otherwise noted.

2. Section 250.45 is amended by adding paragraph (b)(7) to read as follows:

§ 250.45 Loans, extensions of credit, donations and capital contributions to associate companies.

* * * * *

(b) *Exceptions.* * * *

(7) An agreement by any subsidiary company of a registered holding company to assume liability (as guarantor, co-maker, indemnitor, or otherwise) with respect to any security issued by any other subsidiary company in the same holding company system, provided that the issuance and sale of such security is exempt from the declaration requirements of section 6(a) of the Act (15 U.S.C. 79f(a)) pursuant to § 250.52.

3. Section 250.52 is amended by revising paragraphs (a) and (b) to read as follows:

§ 250.52 Exemption of issue and sale of certain securities.

(a) Any registered holding-company subsidiary which is itself a public-utility company shall be exempt from section 6(a) of the Act (15 U.S.C. 79f(a)) and rules thereunder with respect to the issue and sale of any security, of which it is the issuer if:

(1) The issue and sale of such security are solely for the purpose of financing the business of such public-utility subsidiary company;

(2) The issue and sale of such security have been expressly authorized by the state commission of the state in which such subsidiary company is organized and doing business; and

(3) The interest rates and maturity dates of any debt security issued to an associate company are designed to parallel the effective cost of capital of that associate company.

(b) Any subsidiary of a registered holding company which is not a holding company, a public-utility company, an investment company, or a fiscal or financing agency of a holding company, a public-utility company or an investment company shall be exempt from section 6(a) of the Act (15 U.S.C. 79f(a)) and rules thereunder with respect to the issue and sale of any security, of which it is the issuer if:

(1) The issue and sale of such security are solely for the purpose of financing the existing business of such subsidiary company; and

(2) The interest rates and maturity dates of any debt security issued to an associate company are designed to parallel the effective cost of capital of that associate company.

* * * * *

Dated: June 20, 1995.

By the Commission.

Jonathan G. Katz,

Secretary.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15837 Filed 6–27–95; 8:45 am]

BILLING CODE 8010–01–P

[19] See, e.g., Georgia Power Co., Holding Co. Act Release No. 25033 (Feb. 7, 1990)(authorizing deviation from redemption provisions required by Statement of Policy for first mortgage bonds), and System Energy Resources, Inc., Holding Co. Act Release No. 24318 (Feb. 18, 1987) (authorizing charter amendment with earnings coverage requirement different from Statement of Policy for preferred stock). The Statements of Policy themselves contemplate that ''deviations from these standards should be permitted in appropriate cases.'' Holding Co. Act Release Nos. 13105 and 13106 (Feb. 16, 1956).

[20] Holding Co. Act Release No. 25573 (July 7, 1992), 57 FR 31120 (July 14, 1992).

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 250 and 259

[Release No. 35–26313; File No. S7–12–95]

RIN 3235–AG46

Exemption of Acquisition By Registered Public-Utility Holding Companies of Securities of Nonutility Companies Engaged in Certain Energy-Related and Gas-Related Businesses; Exemption of Capital Contributions and Advances to Such Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule and rule amendments.

SUMMARY: The Commission is requesting comment upon proposed rule 58 and related proposed conforming amendments to rules 45(b) and 52(b) under the Public Utility Holding Company Act of 1935 (''Act''). Rule 58 would exempt from the requirement of prior Commission approval under sections 9(a)(1) and 10 of the Act, pursuant to section 9(c)(3), the acquisition by a registered holding company or any subsidiary company of securities of an ''energy-related company,'' as defined in the rule, subject to certain investment limitations and reporting requirements. Rule 58 would also exempt from the requirement of prior Commission approval under sections 9(a)(1) and 10, pursuant to section 9(c)(3), the acquisition by a gas registered holding company or any subsidiary of securities of a ''gas-related company,'' as defined in the rule, subject to certain reporting requirements. The proposed rule and related rule amendments will eliminate unnecessary regulatory burdens and paperwork associated with filings by a registered holding company for Commission approval to invest in nonutility businesses that are closely related to a system's core utility business.

DATES: Comments must be submitted on or before September 26, 1995.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 6–9, Washington, D.C. 20549. Comment letters should refer to File No. S7–12–95. All comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: William C. Weeden, Associate Director, Joanne C. Rutkowski, Assistant Director, Sidney L. Cimmet, Senior Special Counsel, Robert P. Wason, Chief Financial Analyst, or Bonnie Wilkinson, Staff Attorney, Office of Public Utility Regulation, all at (202) 942–0545, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is requesting comment on proposed rule 58 and related amendments to rule 45(b) and rule 52(b) (17 CFR 250.45(b) and 250.52(b)) under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 *et seq.*). Rule 58 would exempt from the requirement of prior Commission approval under sections 9(a)(1) and 10 of the Act, pursuant to section 9(c)(3), the acquisition by a registered holding company or any subsidiary company of any securities of an energy-related company, subject to certain investment limitations and reporting requirements. The proposed rule defines an energy-related company as one that derives, or will derive, substantially all of its revenues from one or more activities specifically enumerated in the rule, and such other activities as the Commission may, from time to time by order upon application under sections 9(a)(1) and 10, designate as energy-related for purposes of the rule. The exemption provided by the rule would be available only if the aggregate investment by a registered holding company in such energy-related companies does not exceed the greater of $50 million and 15% of the holding company's consolidated capitalization.

Proposed rule 58 would also exempt from the requirement of prior Commission approval under sections 9(a)(1) and 10 of the Act, pursuant to section 9(c)(3), the acquisition by a registered gas-utility holding company or any subsidiary company of any securities of a gas-related company, subject to certain reporting requirements. The proposed rule defines a gas-related company as one that derives, or will derive, substantially all of its revenues from one or more activities permitted under the Gas Related Activities Act of 1990, and such other activities as the Commission may, from time to time, by order upon application under sections 9(a)(1) and 10 and the Gas Related Activities Act, designate as gas-related for purposes of the rule.

The Commission is also proposing amendments to rule 45(b) and rule 52(b) concerning financings by registered holding company system companies: (1) to qualify the exception under rule 45(b) to the requirement of Commission approval under section 12(b) and rule 45(a) for capital contributions and open account advances without interest to an energy-related subsidiary company; and (2) to qualify the exemption provided by rule 52(b) from the requirement of Commission approval under sections 6(a) and 7 for issuances and sales of securities by energy-related subsidiary companies, in each case to conform the rules to the investment limitations of proposed rule 58.

I. Background

In recent years, the volume of applications by registered holding companies seeking approval to engage in various nonutility activities that complement, or are natural extensions of, the electric and gas utility businesses has grown dramatically.[1] It is evident from these filings that the utility industry is evolving toward a broadly based energy-related business that is no longer focused solely on the traditional, regulated, production and distribution functions of a utility. Today, almost all utilities engage in a variety of other energy-related activities that involve applications of resources and capabilities developed in the conduct of utility operations. Many involve new uses of skills and experience gained in utility operations, or new uses of utility infrastructure and technology to provide services to utility as well as nonutility customers.

II. Statutory Framework

Section 9(a)(1) of the Act, among other things, requires prior Commission approval under the standards of section 10 for any direct or indirect acquisition by a registered holding company or any subsidiary company of any securities or an interest in a nonutility business. Of interest here, section 10(c)(1) requires that the Commission shall not approve an acquisition that would be detrimental to the carrying out of section 11. Section 11(b)(1), in turn, limits the nonutility activities of a registered holding company to those that are ''reasonably incidental, or economically necessary or appropriate'' to the company's utility business when the Commission finds such activities to be ''necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of [the integrated] system.'' Under the orders of the Commission interpreting section 11(b)(1), a registered holding company may acquire an interest in a nonutility business that has an operating or functional relationship to the utility operations of the holding company system.[2] The Commission has also approved the acquisition of a nonutility interest that (1) involves the sale or lease of products or skills of some complexity developed by the holding company at considerable expense for the benefit of its utility

[1] From 1993 through the end of 1994, for example, the Commission reviewed approximately 122 filings under section 10 involving proposals to acquire nonutility interests, usually through investments in nonutility subsidiaries. These filings represented, in staff time, 13,300 hours per year, or 6.5 staff years.

[2] See Michigan Consolidated Gas Co., 44 S.E.C. 361, 363–65 (1970), aff'd, 444 F.2d 913 (D.C. Cir. 1971); General Public Utilities Corp., 32 SEC 807, 839 (1951).

subsidiaries and not readily available to the rest of the public from other sources; (2) generally requires little or no further investment by the holding company; and (3) permits the amortization of product development expenses with little or no risk.[3]

To encourage energy-related activities, Congress has acted to modify the requirements of section 11(b)(1) on several occasions. In 1992, Congress enacted the Gas Related Activities Act of 1990 (''GRAA'')[4] to enable the three gas utility holding companies then registered under the Act to participate on an equal footing with other gas companies in the development of new gas markets.[5] Congress intended to promote competition in the natural gas markets through investment in gas production, transportation, storage, marketing and similar activities.

The GRAA provides that the acquisition by a gas registered company ''of any interest in any natural gas company[6] or any company organized to participate in activities involving the transportation or storage of natural gas, shall be deemed, for purposes of section 11(b)(1) of the Act, to be reasonably incidental or economically necessary or appropriate to the operation of [the system's] gas utility companies.''[7] The GRAA further provides that the acquisition by a gas registered company ''of any interest in any company organized to participate in activities (other than those of a natural gas company or involving the transportation or storage of natural gas) related to the supply of natural gas, including exploration, development, production, marketing, manufacture, or other similar activities related to the supply of natural or manufactured gas shall be deemed, for purposes of section 11(b)(1) of the Act, to be reasonably incidental or economically necessary or appropriate to the operation of such gas utility companies, if—

(1) the Commission determines, after notice and opportunity for hearing in which the company proposing the acquisition shall have the burden of proving, that such acquisition is in the interest of consumers of each gas utility company of such registered company or consumers of any other subsidiary of such registered company; and

(2) the Commission determines that such acquisition will not be detrimental to the interest of consumers of any such gas utility company or other subsidiary as to the proper functioning of the registered holding company system.''[8] All acquisitions made pursuant to the GRAA thus remain subject to approval under sections 9(a)(1) and 10 of the Act, and related financings remain subject to the applicable provisions of the Act.

In addition, free-standing legislation enacted in 1985, 1986 and 1992 addressed the ownership by registered holding companies of interests in qualifying cogeneration facilities and qualifying small power production facilities (collectively, ''QFs''), as defined under the Public Utility Regulatory Policies Act of 1978, as amended (''PURPA''), in light of the requirements of section 11(b)(1) of the Act.[9] For purposes of the Act, a QF is a nonutility interest of a registered holding company.[10] The 1985 amendment permitted gas registered holding companies to acquire cogeneration QFs without regard to the requirement of a functional relationship between the QF and the utility business of the registered system.[11] The 1986 legislation provided similar relief to electric registered holding companies.[12] The two amendments thus permitted registered holding companies and their subsidiaries to own cogeneration QFs without regard to location.[13] The 1992 amendment eliminated the distinction made in the earlier amendments between cogeneration QFs and small power production QFs. Thus, registered holding companies and their subsidiary companies may now own both small power production QFs and cogeneration QFs wherever located. As in the case of the GRAA, however, the acquisition of the securities of a QF entity remains subject to approval under sections 9(a)(1) and 10 of the Act, and related financings by a QF subsidiary company remain subject to the applicable provisions of the Act.

Finally, Congress in 1992 enacted legislation to promote the development of alternative powered vehicles as a part of a national energy policy to reduce automobile emissions.[14] The legislation defines vehicular natural gas as ''natural or manufactured gas that is ultimately used as a fuel in a self-propelled vehicle,'' and provides that a nonutility company that is involved, as a primary business, in the sale of vehicular natural gas, or the manufacture, sale, transport, installation, servicing, or financing of equipment related to the sale for consumption of vehicular gas is a nonutility company for purposes of the Act and may be acquired by a gas registered holding company in any geographic area.[15]

Section 9(c)(3) of the Act provides an exemption from the requirements of section 9(a)(1) for the acquisition of ''such commercial paper and other securities, within such limitations, as the Commission may by rules and regulations or order prescribe as appropriate in the ordinary course of business of a registered holding company or subsidiary company thereof and as not detrimental to the public

[3] See Southern Co., Holding Co. Act Release No. 26211 (Dec. 30, 1994) (citing CSW Credit, Inc., Holding Co. Act Release No. 24348 (Mar. 18, 1987)).

[4] Pub. L. No. 101–572, 104 Stat. 2810 (codified at 15 U.S.C. § 79k note (1990)).

[5] S. 8367 Cong. Rec. (June 20, 1990). The three gas registered holding companies were Columbia Gas System, Inc. (''Columbia''), Consolidated Natural Gas Company (''CNG'') and National Fuel Gas Company (''NFG'').

[6] ''Natural gas company'' is defined to have the same meaning given such term under the Natural Gas Act, 15 U.S.C. 717(a) *et seq., viz.*, an individual or corporation engaged in the transportation of natural gas in interstate commerce or the sale in interstate commerce of natural gas for resale.

[7] Section 2(a), GRAA.

[8] Section 2(b), GRAA. Section 2(c) further provides that each determination under section (b) shall be made on a case-by-case basis, not based on any ''preset criteria.'' Section 2(d) provides that ''[n]othing contained herein shall be construed to affect the applicability of any other provisions of the Act to the acquisition or retention of any such interest by any such company.''

[9] PURPA appears generally in 16 U.S.C. 2601 *et seq.* Section 3(18) of the Federal Power Act (''FPA''), as amended by PURPA, defines a cogeneration facility as a facility which produces—(i) electric energy, and (ii) steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating, or cooling purposes. 16 U.S.C. 796(18)(A). Section 210 of PURPA encourages energy conservation by directing the Federal Energy Regulatory Commission (''FERC'') to define and to prescribe rules that would exempt so-called ''qualifying'' cogeneration facilities and ''qualifying'' small power production facilities from the FPA, the Act, and certain state laws ''if the [FERC] determines such exemption is necessary to encourage cogeneration and small power production.'' 16 U.S.C. 824a-3(e)(1). The rules adopted by the FERC concerning qualifying facilities require electric utilities to interconnect with QFs and to offer to purchase power from, and sell power to, QFs, and set the general standard for determining the rates for power sale transactions with QFs. 18 CFR 292.301–308.

[10] Under section 210 of PURPA, a QF is exempt under the Act from the definition of an ''electric utility company'' and is entitled to other benefits under state and federal law.

[11] Pub. L. 99–186, 99 Stat. 1180 (codified at 15 U.S.C. 79k note (1988)).

[12] Pub. L. 99–553, 100 Stat. 3087 (codified at 15 U.S.C. 79k note (1988)).

[13] Neither bill made any allowance, however, for investments in small power production QFs. As a result, acquisitions of such interests remained subject to the section 11(b)(1) requirement of functional relationship. Prior to the 1992 legislation, this requirement barred gas registered holding companies from investing in small power production facilities and limited electric registered holding companies to investments located within the service territory of their utility subsidiaries.

[14] See Articles IV, V and VI, Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2777 (1992) (codified at 15 U.S.C. 79b note (1992)).

[15] The legislation also provides that the sale or transportation of vehicular natural gas by a company or its subsidiary shall not be taken into consideration in determining whether, under section 3 of the Act, such company is exempt from registration. *Id.*

interest or the interest of investors or consumers.'' (Emphasis added). The Commission has previously issued orders under section 9(c)(3) exempting from section 9(a)(1) acquisitions of small amounts of securities of local industrial development corporations, affordable housing projects, and venture capital concerns, among others.[16] Because the investments in these matters did not result in control or create an affiliate relationship,[17] the Commission reasoned that they did not contravene the requirements of section 10(c) and, by reference, section 11(b).[18] The Commission has also adopted rule 40(a)(5) under section 9(c)(3) to exempt such acquisitions from the requirements of section 9(a)(1), provided that an affiliate relationship does not result, and subject to certain annual dollar limitations.[19]

III. Proposed Rule 58

Proposed rule 58 would exempt from the requirement of prior Commission approval under sections 9(a)(1) and 10, pursuant to section 9(c)(3), the acquisition by a registered holding company or a subsidiary company of securities of an ''energy-related company'' or a ''gas-related company,'' as defined in the rule, subject to certain conditions. The proposed rule would not exempt from the requirement of prior Commission authorization under section 10 any acquisition of securities of an electric utility company or a gas utility company within the meaning of the Act, or exempt an energy-related or gas-related subsidiary company from any provision of the Act.[20]

Proposed rule 58(a) would authorize a registered holding company or any subsidiary thereof to acquire securities of an energy-related company, as defined; provided that a registered holding company's aggregate investment in such companies does not exceed the greater of 15% of consolidated capitalization and $50 million. Proposed rule 58(b) would authorize a gas registered holding company or any subsidiary thereof to acquire securities of a gas-related company, as defined, without limitation. All acquisitions pursuant to the rule would be considered to be ''appropriate in the ordinary course of business'' within the meaning of section 9(c)(3), and thus exempt from the requirements of sections 9(a)(1) and 10.

An energy-related company is defined in proposed rule 58 as a company that derives or will derive substantially all of its revenues from one or more of the activities set forth in subsections (b)(i) through (xii) and such other nonutility activities as the Commission may from time to time, by order upon application under sections 9(a)(1) and 10, authorize a registered holding company to engage in, and, in so doing, designate as energy-related for purposes of rule 58. The rule identifies the following categories of activities as energy-related:

(1) the rendering of energy conservation and demand-side management services; [21]

(2) the development and commercialization of electro-technologies related to energy conservation, storage and conversion, energy efficiency, waste treatment, greenhouse gas reduction, and similar innovations; [22]

(3) the manufacture, conversion, sale and servicing of electric and compressed natural gas powered vehicles and ownership and operation of related refueling and recharging equipment; [23]

(4) the sale, installation, and servicing of electric and gas appliances for residential, commercial and industrial heating and lighting; [24]

(5) the brokering and marketing of energy commodities, including but not limited to electricity or natural or manufactured gas; [25]

(6) the production, conversion, and distribution of thermal energy products, such as process steam, heat, hot water, chilled water, air conditioning, compressed air and similar products; alternative fuels; and renewable energy resources; [26]

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[16] See, e.g., Hope Gas, Inc., Holding Co. Act Release No. 25739 (Jan. 26, 1993) and Georgia Power Co., Holding Co. Act Release No. 25949 (Dec. 15, 1993) (securities of local venture capital companies); Georgia Power Co., Holding Co. Act Release No. 26220 (Jan. 24, 1995) and East Ohio Gas Co., Holding Co. Act Release No. 25046 (Feb. 27, 1990) (securities of affordable housing partnerships); Potomac Edison Co., Holding Co. Act Release No. 25312 (May 14, 1991) (shares of for-profit economic development corporation).

[17] Section 2(a)(11) in pertinent part defines ''affiliate'' of a specified company to mean:

(A) any person that directly or indirectly owns, controls, or holds with power to vote, 5 per centum or more of the outstanding voting securities of such specified company; [and]

(B) any company 5 per centum or more of whose outstanding voting securities are owned, controlled, or held with power to vote, directly or indirectly, by such specified company.

[18] The Commission has rejected the attempted use of section 9(c)(3) to circumvent the requirements of section 11(b)(1), referenced in section 10(c)(1). See Michigan Consolidated Gas Company, 44 S.E.C. at 366–67 (''Section 9(c)(3) cannot be employed to evade the proscription of Section 11(b)(1) prohibiting the acquisition by a gas utility company of an interest in a business unrelated to its business'').

[19] Under rule 40(a)(5), a holding company or subsidiary may acquire annually up to $5 million of the securities of economic development companies created under special state laws promoting economic development, and up to $1 million annually in local industrial or nonutility enterprises.

[20] In this regard, the Commission notes in particular that it will have jurisdiction under sections 12(f) and 13(b) and the rules thereunder over affiliate transactions with these companies involving the sale of goods or services or other property. The Commission anticipates that the proposed quarterly reporting requirement on Form U–9C–3, discussed *infra*, will provide state commissions with a valuable additional source of information on affiliate transactions.

[21] See Eastern Utilities Associates, Holding Co. Act Release No. 26232 (Feb. 15, 1995); EUA Cogenex Corp., Holding Co. Act Release No. 25636 (Sept. 17, 1992); Northeast Utilities, Holding Co. Act Release No. 25114–A (July 27, 1990); Entergy Corp., Holding Co. Act Release No. 25718 (Dec. 28, 1992).

[22] See Southern Co., Holding Co. Act Release No. 23888 (Oct. 31, 1985) (investment in venture to construct, own and operate facilities for the manufacture and sale of photovoltaic cells); Entergy Corp., Holding Co. Act Release No. 25718 (Dec. 28, 1992) (acquisition of stock interest in company that develops, manufactures and markets energy efficient lighting technologies); American Electric Power Co., Inc., Holding Co. Act Release No. 25424 (Dec. 11, 1991) (acquisition of interest in company to develop, manufacture and market electronic light bulb); Allegheny Power System, Inc., Holding Co. Act Release No. 26225 (Feb. 1, 1995) and General Public Utilities Corp., Holding Co. Act Release No. 26230 (Feb. 8, 1995) (acquisition of limited partnership interest in venture capital fund that will invest in companies commercializing various electro-technologies).

[23] See Consolidated Natural Gas Co., Holding Co. Act Release No. 25615 (Aug. 27, 1992); Central Power and Light Co., Holding Co. Act Release No. 26160 (Nov. 18, 1994). As noted supra, Congress has enacted legislation to promote the development of activities related to vehicular natural gas as a part of a national energy policy to reduce automobile emissions.

[24] Historically, the Commission has allowed registered holding companies to engage in the marketing of standard appliances. See Engineers Public Service Co., 12 S.E.C 41 (1942). As a related matter, rule 48 provides an exemption for the acquisition of evidence of customer indebtedness in connection with the sale of standard appliances. The Commission has permitted the expansion of marketing and sales activities to encompass other types of appliances and energy-utilizing equipment. See, e.g., Consolidated Natural Gas Co., Holding Co. Act Release No. 26234 (Feb. 23, 1995). The Commission contemplates that subsection (b)(1)(iv) will include all present and future types of equipment used for residential, commercial and industrial heating and lighting.

[25] The Commission has authorized registered holding companies to engage in a variety of gas and electricity brokering and marketing activities. See, e.g., Consolidated Natural Gas Co., Holding Co. Act Release No. 24329 (Feb. 27, 1987) (authorizing creation of a subsidiary to compete with independent gas marketing companies); Entergy Corp., Holding Co. Act Release No. 25848 (July 8, 1993) (authorizing sale of consulting services to nonaffiliates, including expertise relating to brokering of power resources); UNITIL Corp., Holding Co. Act Release No. 25816 (May 24, 1993) (authorizing organization of a new subsidiary to serve as power brokering agent).

[26] There are numerous instances in which the Commission has permitted retention of interests in steam production and distribution businesses. See, e.g., General Public Utilities Corp., 32 S.E.C. at 840–41. More recently, the Commission approved an acquisition of existing steam production facilities inside an industrial site. See Southern Co., Holding Company Act Release No. 26185 (Dec. 13, 1994).

Continued

(7) the sale of technical, operational, management, and other similar kinds of services and expertise, developed in the course of utility operations in such areas as power plant and transmission system engineering, development, design and rehabilitation; construction; maintenance and operation; fuel procurement, delivery and management; environmental licensing, testing and remediation; and other similar areas; [27]

(8) the ownership and operation of ''qualifying facilities'' within the meaning of the Public Utility Regulatory Policies Act of 1978, as amended, and facilities necessary or incidental thereto, including thermal energy utilization facilities purchased or constructed primarily to enable the qualifying facility to satisfy the useful thermal output requirements under PURPA; [28]

(9) the ownership and operation of fuel procurement, transportation, handling and storage facilities, scrubbers, and resource recovery and waste water treatment facilities; [29]

(10) the production, transportation, distribution or storage of all forms of energy other than electricity and natural or manufactured gas; [30]

(11) the development and commercialization of technologies or processes which utilize coal waste by-products as an integral component of such technology or process; [31]

(12) the ownership, sale, leasing or licensing of the use of telecommunications facilities and equipment (such as fiber optic lines, coaxial cable, or other communications capacity, towers and tower sites and other similar properties); [32] and

(13) such other activities and investments as the Commission may, from time to time, upon application under section 10 designate as energy-related for purposes of the rule.

The last category is intended to encompass all other activities, not specifically identified in the first twelve categories, that the Commission may hereafter determine, by order upon application, to be energy-related. This feature of the rule will ensure that it does not remain static as the electric and gas industries continue to evolve. Applications concerning additional nonutility activities will of course be subject to public notice in the **Federal Register** pursuant to rule 23. The notice will specify that Commission approval of the application may involve a designation of the activity in question as energy-related for purposes of rule 58.

Proposed rule 58 defines a gas-related company as a company that derives or will derive substantially all of its revenues from activities permitted under sections 2(a) and 2(b) of the GRAA and such other nonutility activities as the Commission may, from time to time, by order upon application under sections 9(a)(1) and 10 and section 2(b) of the GRAA, authorize a gas registered holding company to engage in, and, in so doing, designate as gas-related for purposes of rule 58.

The proposed rule contemplates that both energy-related and gas-related companies will derive substantially all of their revenues from the respective activities designated in the rule so long as the registered holding company system holds the investment. The Commission requests comment on whether any special reporting requirements may be needed with respect to the revenues derived from any other activities of such companies, to ensure that this requirement is satisfied. The Commission also invites specific comment on whether the proposed rule should include other kinds or categories of energy-related activities.

The Commission believes that it is appropriate, as contemplated by section 9(c)(3), to limit the aggregate investment of a registered holding company in energy-related companies pursuant to the proposed rule, to ensure that these acquisitions are not detrimental to the public interest or the interest of investors or consumers.[33] Accordingly, the Commission proposes to limit acquisitions of the securities of such companies to an amount equal to the greater of 15% of the consolidated capitalization of the holding company and $50 million. Within these parameters, a registered holding company will have discretion and flexibility to invest in energy-related companies. In some cases, a registered holding company or its subsidiary may acquire a limited interest and/or invest a very small amount of capital in an energy-related company. In other cases, those, for example, involving ownership of a QF or a steam production plant, the acquisition may involve a large interest and/or substantial capital outlays.

The Commission contemplates that prior investments in energy-related companies pursuant to orders would not be counted toward the limitation on aggregate investment in proposed rule 58. The Commission requests specific comment, however, on the appropriateness of excluding such prior investment for purposes of the rule.

The proposed limitation to 15% of consolidated capitalization, as reported by the registered holding company in its most recent Form 10–K or Form 10–Q, as applicable, affords significant flexibility for investments in energy-

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The Commission has also approved the development of, and limited investments in, facilities for producing or recovering alternative fuels and energy resources. See Southern Co., Holding Co. Act Release No. 26221 (Jan. 25, 1995); New England Electric System, Holding Co. Act Release No. 26277 (Apr. 26, 1995).

[27] The Commission has authorized a number of registered holding companies to engage in consulting activities. See, e.g., Southern Co., Holding Co. Act Release No. 22132 (July 17, 1981); American Electric Power Co., Inc., Holding Co. Act Release No. 22468 (Apr. 28, 1982); Middle South Utilities, Holding Co. Act Release No. 22818 (Jan. 11, 1983); New England Electric System, Holding Co. Act Release No. 22719 (Nov. 19, 1982).

[28] Although a QF is a nonutility interest under the Act, a subsidiary company of a registered holding company that acquires such an interest remains subject to regulation under the Act. The proposed rule would exempt an acquisition of the securities of such subsidiary companies from section 9(a)(1) if the requirements of the rule are met.

The Commission has approved acquisitions of ancillary facilities, such as an integrated thermal host facility or fuel handling and transportation facilities, in connection with QF acquisitions. See Central and South West Corp., Holding Co. Act Release No. 25399 (Nov. 1, 1991) (18-acre thermal host greenhouse); Energy Initiatives, Inc., Holding Co. Act Release No. 25991 (Feb. 22, 1994) (interests in fuel partnership to supply gas to QF project).

[29] The Commission has authorized the retention and acquisition of interests in such businesses in connection with the utility operations of an integrated system. See, e.g., North American Co., 11 SEC 194, 225–226, 248 (1942); Arkansas Natural Gas Corp. v. SEC, 154 F.2d 597 (5th Cir.), cert. denied, 329 U.S. 738 (1946). See also Ohio Power Co., Holding Co. Act Release No. 19594 (June 25, 1976) (rail-to-barge coal handling facility); Middle South Utilities, Inc., Holding Co. Act Release No. 18221 (Dec. 17, 1973) (bulk oil storage facilities); Jersey Central Power and Light Co., Holding Co. Act Release No. 24664 (June 14, 1988) (reservoir, dam and related facilities for storage and discharge of water); New England Electric System, Holding Co. Act Release No. 26277 (Apr. 26, 1995) (investment in venture that would install equipment at power stations owned by nonaffiliates to separate unburned carbon from coal ash).

[30] See, e.g., Lone Star Gas Corp., 12 S.E.C. 286, 298–99 (1942) (finding gasoline, oil and butane and propane production operations to be related to retainable natural gas production operations).

[31] New England Electric System, Holding Co. Act Release No. 26277 (April 26, 1995).

[32] See, e.g., Consolidated Gas Transmission Corp., Holding Co. Act Release No. 23914 (Nov. 20, 1985) (lease of microwave radio facilities); Appalachian Power Co., Holding Co. Act Release No. 24772 (Dec. 9, 1988) (lease of optical fiber systems); Southern Co., Holding Co. Act Release No. 26211 (Dec. 30, 1994) (mobile radio system).

[33] Proposed rule 58 does not affect the Commission's jurisdiction over the issuance and sale of securities by a registered holding company or its subsidiary to finance investments in an energy-related or a gas-related company. In its review of financing applications under the standards of section 7(d) of the Act, the Commission must consider the effect of any financing on the consolidated capital structure of the registered system and must examine whether the security being sold is reasonably adapted to the underlying earning power of the holding company's subsidiary operations. Thus, in addition to the limitations on nonutility investments incorporated in proposed rule 58, the Commission has other statutory means to monitor the financial and other effects of nonutility activities on registered systems.

related companies by the larger registered systems.[34] The proposed alternative limitation of $50 million is intended to benefit the smaller registered systems.[35] The Commission invites specific comment on whether the proposed investment limitations are reasonable under the circumstances. The Commission also requests specific comment as to whether a different measure of financial capacity, such as consolidated retained earnings, should be used for purposes of the rule.[36]

The Commission is not proposing a similar limitation upon acquisitions of securities of a gas-related company. The activities contemplated by the GRAA are *per se* closely related to the core utility business of the gas registered holding companies, and currently represent more than 60% of the consolidated assets of these systems. There is no indication that Congress intended for the Commission to place investment limits on these activities.[37] Even if a limitation were deemed appropriate, it is difficult, as a practical matter, to select a limitation that would fairly take account of the disparities among the gas registered holding companies as to the nature and extent of GRAA-related investments to date.[38] The Commission requests particular comment, however, as to the appropriateness of a limitation in proposed rule 58 upon investments in gas-related companies.

The Commission is aware that the magnitude of the investments proposed to be exempted by rule 58 may cause concerns as to whether these investments, together with other factors affecting the registered holding company system, may have potential adverse effects on the system's utility companies and their customers. Consequently, the Commission seeks comment on whether rule 58 should include additional conditions to take account of other adverse conditions that may be present, and what form such conditions should take. Commenters are invited to address the need for additional conditions to use of the rule 58 exemption based on the financial condition of the registered holding company system, the extent of losses experienced by the system over recent periods, prior bankruptcies of system companies, and any other basis specified by the commenter.

The proposed rule defines the term ''aggregate investment'' to mean all amounts invested or committed to be invested in energy-related companies, for which there is recourse, directly or indirectly, to the registered holding company. The term is intended to have a meaning similar to that given the term in rule 53.[39] Aggregate investment, for purposes of rule 58, would thus include amounts actually invested in an energy-related company, as well as any amounts committed under the terms of subscription agreements or stand-by or other similar capital funding agreements.[40]

In addition, proposed rule 58(c) would require a registered holding company relying upon the rule to file with this Commission and each state commission having jurisdiction over the retail rates of the registered system operating companies a quarterly report disclosing acquisitions pursuant to the rule and certain other information required by proposed Form U–9C–3, discussed further *infra*. The reporting requirements are intended to enable the Commission and the state and local regulatory authorities to monitor energy-related and gas-related investments and activities, including any intrasystem transactions involving the operating companies in registered systems.

The Commission believes it is unnecessary to restrict the extent to which an energy-related company or a gas-related company may serve nonassociate companies.[41] Prior orders of the Commission have not subjected gas-related businesses to any restriction in this regard. In addition, the Commission recently determined that it was appropriate to remove a percentage limitation that had previously been imposed upon the energy management services business of a nonutility subsidiary of a registered holding company.[42] The Commission's decision was based on a number of factors, including evidence of the fundamental changes that the utility industry has undergone in recent years, such that the industry no longer focuses primarily upon the need to meet increased demand through the construction of new generating capacity. Specifically, the Commission noted that energy conservation and demand-side measures are today ''an important complement to the utility business,'' and determined that the energy management services business would further an important national policy, namely, the promotion of energy conservation and efficiency.[43]

On the basis of the Commission's experience to date and its assessment of the significant changes now underway in the energy and energy services industries, the Commission believes that energy-related businesses (as defined in

[34] As an example, the Southern Company's consolidated capitalization was approximately $17.8 billion for the year ended December 31, 1994. Pursuant to proposed rule 58 and the related proposed amendment to rule 45(b), Southern could invest up to $2.7 billion in energy-related companies, excluding existing subsidiaries.

[35] For example, the consolidated capitalization of UNITIL Corporation, at December 31, 1994, was approximately $129.7 million. The proposed percentage limitation would allow UNITIL to invest an amount of up to $19.451 million in energy-related companies, excluding existing subsidiaries.

[36] See, *e.g.*, rule 53, which creates a safe harbor for a financing in connection with investments in exempt wholesale generators if, among other conditions, aggregate investment in exempt wholesale generators and foreign utility companies would not exceed 50% of consolidated retained earnings.

[37] As noted previously, Congress intended that the GRAA, by permitting gas registered holding companies to invest in gas production, transportation, storage, marketing and similar activities, would promote competition in the natural gas markets. The Commission retains jurisdiction over the financing activities of the gas registered holding companies, which finance the operations of their subsidiaries at the parent company level.

[38] With respect to section 2(a) of the GRAA, NFG had invested approximately $292.1 million in gas pipeline transportation and gas storage as of December 31, 1994, whereas Columbia had invested approximately $1.65 billion and CNG approximately $980.6 million. With respect to section 2(b), CNG had invested approximately $876.5 million in exploration and development as of that date, whereas Columbia had invested approximately $373.1 million and NFG approximately $237.5 million.

[39] See Holding Co. Act Release No. 25886 (Sept. 23, 1993), 58 FR 51488 (Oct. 1, 1993). Rule 53(a)(1)(i) (17 CFR 250.53(a)(1)(i)) defines ''aggregate investment'' to mean:

> all amounts invested, or committed to be invested, in exempt wholesale generators and foreign utility companies, for which there is recourse, directly or indirectly, to the registered holding company. Among other things, the term includes, but is not limited to, preliminary development expenses that culminate in the acquisition of an exempt wholesale generator or a foreign utility company; and the fair market value of assets acquired by an exempt wholesale generator or a foreign utility company from a system company (other than an exempt wholesale generator or a foreign utility company).

[40] For purposes of the rule, aggregate investment would not include the portion of a registered holding company's book investment in an energy-related company that is attributable to increases in retained earnings or to indebtedness issued by any such subsidiary with respect to which there is no recourse directly or indirectly to the registered holding company. ''Aggregate investment'' would also not include the amount invested by one energy-related subsidiary company in another such company.

[41] Prior orders of the Commission have sometimes restricted transactions on behalf of nonassociates by imposing conditions to limit, geographically or otherwise, the operations or source of revenues of a nonutility business. See, e.g., Eastern Utilities Associates, Holding Co. Act Release No. 24273 (Dec. 19, 1986) (50% limitation upon energy management service activities outside New England); National Fuel Gas Co., Holding Co. Act Release No. 24381 (May 1, 1987) (50% limitation on gas well and pipeline construction on behalf of nonassociates); CSW Credit, Inc., Holding Co. Act Release No. 25995 (Mar. 2, 1994) (50% limitation on amount of accounts receivable factored for nonassociates).

[42] Eastern Utilities Associates, Holding Co. Act Release No. 26232 (Feb. 15, 1995).

[43] *Id.*

the proposed rule) may now be considered sufficiently related to the core utility business of registered holding companies as not to require the imposition of limitations upon transactions with nonassociates. It is also reasonable to expect that the participation in such activities by registered holding companies, together with exempt holding companies and investor-owned utilities not subject to the Act, will produce benefits to investors, consumers and the public. Further, it does not appear that the participation of registered holding companies will lead to a recurrence of the evils that the Act was intended to address.

IV. Proposed Amendments to Rule 52 and Rule 45

The Commission is also requesting comment on proposed conforming amendments to rules 52 and 45. Financings by registered system companies of the activities of energy-related businesses would be subject to these rules.

Rule 52, as recently amended,[44] exempts from the requirement of Commission approval under sections 6(a) and 7 the issue and sale by a nonutility subsidiary of a registered holding company of any common stock, preferred stock, bond, note or other form of indebtedness, subject to certain conditions. Rule 52 further exempts from the requirement of prior Commission approval under sections 9(a)(1) and 10 the acquisition by a registered holding company of any such security, provided that the transaction does not involve the formation of a new subsidiary. The Commission has proposed to amend rule 52 further to expand the types of securities that qualify for the exemption.[45] The exemptions under rule 52(b) and 52(d), both currently in effect and as proposed to be amended, are broader than, and thus are inconsistent with, the exemption in proposed rule 58. Accordingly, the Commission proposes to amend rule 52 to conform the limitation of the rule upon the aggregate amount of such securities that may be issued and sold by energy-related subsidiaries and acquired by registered holding companies to the limitation of proposed rule 58.

Rule 45(b) currently exempts from the requirement of Commission approval under section 12(b) and rule 45(a) thereunder certain investments by a registered holding company in its existing subsidiaries by means of cash capital contributions or open account advances. In particular, rule 45(b)(4), as recently amended, exempts without limitation any capital contribution or open account advance without interest to a subsidiary company.[46] For purposes of proposed rule 58, the exemption is over-inclusive. Accordingly, the Commission proposes to amend rule 45(b)(4) to conform the aggregate amount of capital contributions and open account advances that may be made to energy-related subsidiary companies to the limitations of proposed rule 58.

V. Proposed Quarterly Reports on Form U–9C–3

In recent years, the Commission has formalized the practice of including in its orders approving acquisitions of nonutility interests under section 10 a requirement for the filing of periodic, usually quarterly, reports under rule 24.[47] These reports typically provide continuous information on authorized business activities, intercompany guaranties and billings, and results of operations. Since these reporting obligations have been imposed on a case-by-case basis, there are instances in which some holding companies now must prepare and file as many as five different periodic reports under rule 24. Proposed Form U–9C–3 would require essentially the same information covered in these reports, and it is intended that a holding company may file a single Form U–9C–3 for all energy-related company subsidiaries in lieu of the separate rule 24 certificates required under the terms of any outstanding Commission orders. This procedure should lessen the reporting burden for holding companies. Moreover, a single, comprehensive report covering all energy-related and gas-related business activities of a registered holding company should be more useful for the state commissions, with which the report must also be filed. The Commission requests comment on the form and content of Form U–9C–3. In particular, the Commission requests comment on whether a report should be filed quarterly or on a semiannual or other basis. The Commission also notes the need to balance, on the one hand, the legitimate needs of regulators for information regarding nonutility activities, and, on the other, the needs of registered holding companies to protect from public disclosure commercially and competitively sensitive information. In this respect, the primary regulatory purposes of the report will be to provide financial and other information on transactions between energy-related company subsidiaries and their regulated associate companies. The report does not call for information that would be commercially sensitive, such as the identity of customers or information regarding revenues and earnings derived from specific business ventures. Nevertheless, there may be instances in which a holding company feels the need to claim confidential treatment under rule 104 for some items of information. Reasonable requests for confidential treatment would not be precluded.

VI. Conclusion

The Commission believes that the registered holding-company systems should be relieved of the regulatory burden of having to file multiple applications for authority to engage in nonutility activities, through investments in the securities of other companies, that are of the same or similar character or type as those the Commission has allowed in previous cases. The proposed rules are intended to permit investments in energy-related companies and gas-related companies, as defined, without geographic limits or other restrictions such as have been selectively incorporated into previous orders. The Commission believes that the proposed limitation of rule 58 on the aggregate amount that a registered holding company system may invest, directly or indirectly, in energy-related companies will assure that financial integrity of a registered holding company system will not be impaired by investments pursuant to the rule. In addition, the proposed reporting requirements should enable the Commission and interested state and local regulators to monitor the financial and other impact of such investments.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the proposed amended rule will not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, may be obtained from Bonnie Wilkinson, Office of Public Utility Regulation, Division of Investment

[44] See Holding Co. Act Release No. 26311 (June 20, 1995).

[45] See Holding Co. Act Release No. 26312 (June 20, 1995).

[46] See Holding Co. Act Release No. 26311 (June 20, 1995).

[47] See, e.g., Southern Co., Holding Co. Act Release Nos. 26212 (Dec. 30, 1994) and 26221 (Jan. 25, 1995); American Electric Power Co., Holding Co. Act Release No. 26267 (Apr. 5, 1995); Entergy Corp., Holding Co. Act Release No. 25848 (July 8, 1993); Northeast Utilities, Holding Co. Act Release No. 26213 (Dec. 30, 1994).

Management, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549.

Costs and Benefits

Rule 58 will substantially decrease regulatory costs for the eleven (11) electric and three (3) gas registered holding companies. In calendar years 1993 and 1994, 122 applications would not have been filed had the proposed rule 58 and related rule amendments been in place. Estimated savings per application would have been approximately $70,000 including related legal, accounting, and management costs. Thus, for 122 applications filed in calendar years 1993 and 1994, the aggregate savings would have been approximately $8,540,000 or $4,270,000, respectively, per year. Moreover, the reduction in Commission staff hours would have been approximately 13,300 hours per year (6.5 staff years). The only cost to the registered holding companies in complying with the rule will be the cost of completing and filing Form U–9C–3 on a quarterly basis. It is estimated that approximately 16 hours will be required to complete each form at an estimated cost of $250 per hour. Assuming 61 acquisition applications per year, the cost of compliance reporting would approximate $244,000 per year.

Paperwork Reduction Act

The proposed rule and rule amendments are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 79 *et seq.*) and will be submitted for approval to the Office of Management and Budget.

Statutory Authority

The Commission is proposing to adopt rule 58 and to amend rules 45 and 52 pursuant to sections 6, 9, 12 and 20 of the Act.

List of Subjects in 17 CFR Parts 250 and 259

Electric utilities, Holding companies, Natural gas, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rules

For the reasons set out in the preamble, chapter II, title 17, of the Code of Federal Regulations is proposed to be amended as follows:

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

1. The authority citation for part 250 continues to read as follows:

Authority: 15 U.S.C. 79c, 79f(b), 79i(c)(3) and 79t, unless otherwise noted.

2. Section 250.45 is amended by revising paragraph (b)(4) to read as follows:

§ 250.45 Loans, extensions of credit, donations and capital contributions to associate companies.

* * * * *

(b) *Exceptions.* * * *

(4) Capital contributions or open account advances, without interest, by a company to its subsidiary company; *Provided*, That capital contributions or open account advances to any energy-related company subsidiary, as defined in rule 58 (§ 250.58), shall not be exempt hereunder unless, after giving effect thereto, the aggregate investment by a registered holding company or any subsidiary thereof in such company and all other such energy-related subsidiary companies does not exceed the limitation in rule 58(a)(1) (§ 250.58(a)(1)).

3. Section 250.52 is amended by revising paragraph (b) as follows:

§ 250.52 Exemption of issue and sale of certain securities.

* * * * *

(b) Any subsidiary of a registered holding company which is not a holding company, a public-utility company, an investment company, or a fiscal or financing agency of a holding company, a public-utility company or an investment company shall be exempt from section 6(a) of the Act (15 U.S.C. 79f(a)) and rules thereunder with respect to the issue and sale of any security of which it is the issuer if:

(1) The issue and sale of such security are solely for the purpose of financing the existing business of such subsidiary company; and

(2) The interest rates and maturity dates of any debt security issued to an associate company are designed to parallel the effective cost of capital of that associate company; Provided, That any security issued to an associate company by any energy-related company subsidiary, as defined in rule 58 (§ 250.58), shall not be exempt hereunder unless, after giving effect thereto, the aggregate investment by a registered holding company or any subsidiary thereof in such subsidiary and all other such energy-related subsidiary companies does not exceed the limitation in rule 58(a)(1) (§ 250.58(a)(1)).

4. Section 250.58 is added to read as follows:

§ 250.58 Exemption of investments in certain nonutility companies.

(a) *Exemption from Section 9(a).* Section 9(a) of the Act (15 U.S.C. 79i(a)) shall not apply to:

(1) The acquisition by a registered holding company, or any subsidiary company thereof, of the securities of an energy-related company; provided that, after giving effect to any such acquisition, the aggregate investment by such registered holding company or any subsidiary thereof in all such companies does not exceed the greater of:

(i) $50 million; and

(ii) 15% of the consolidated capitalization of such registered holding company, as reported in the registered holding company's most recent Annual Report on Form 10–K or Quarterly Report on Form 10–Q (§ 249.308a or § 249.310 of this chapter) filed under the Securities Exchange Act of 1934, as amended (15 U.S.C. 78 *et seq.*); or

(2) The acquisition by a registered gas-utility holding company, or a subsidiary company thereof, of the securities of a gas-related company.

(b) *Definitions.* For the purpose of this section:

(1) The term *energy-related company* shall mean any company that derives or will derive substantially all of its revenues (exclusive of revenues from temporary investments) from one or more of the following businesses:

(i) The rendering of energy conservation and demand-side management services;

(ii) The development and commercialization of electro-technologies related to energy conservation, storage and conversion, energy efficiency, waste treatment, greenhouse gas reduction, and similar innovations;

(iii) The manufacture, conversion, sale and servicing of electric and compressed natural gas powered vehicles and ownership and operation of related refueling and recharging equipment;

(iv) The sale, installation, and servicing of electric and gas appliances for residential, commercial and industrial heating and lighting;

(v) The brokering and marketing of energy commodities, including but not limited to electricity or natural or manufactured gas;

(vi) The production, conversion, and distribution of thermal energy products, such as process steam, heat, hot water, chilled water, air conditioning, compressed air and similar products; alternative fuels; and renewable energy resources;

(vii) The sale of technical, operational, management, and other similar kinds of services and expertise, developed in the course of utility operations in such areas as power plant and transmission system engineering, development, design and rehabilitation;

construction; maintenance and operation; fuel procurement, delivery and management; environmental licensing, testing and remediation; and other similar areas;

(viii) The ownership or operation of ''qualifying facilities,'' as defined under the Public Utility Regulatory Policies Act of 1978, as amended (''PURPA''), and facilities necessary or incidental thereto, including thermal energy utilization facilities purchased or constructed primarily to enable the qualifying facility to satisfy the useful thermal output requirements under PURPA;

(ix) The ownership or operation of fuel procurement, transportation, handling and storage facilities, scrubbers, and resource recovery and waste water treatment facilities;

(x) The production, transportation, distribution or storage of all forms of energy other than electricity and natural or manufactured gas;

(xi) The development and commercialization of technologies or processes which utilize coal waste by-products as an integral component of such technology or process;

(xii) The ownership, sale, leasing or licensing of the use of telecommunications facilities and equipment (such as fiber optic lines, coaxial cable, or other communications capacity, towers and tower sites and other similar properties); and

(xiii) Such other activities and investments as the Commission may, from time to time, upon application under section 10 of the Act (15 U.S.C. 79j) designate as energy-related for purposes of this section.

(2) The term *gas-related company* shall mean a business that derives or will derive substantially all of its revenues from activities permitted under the Gas-Related Activities Act of 1990, 104 Stat. 2810, and such other activities and investments as the Commission may, from time to time, upon application under section 10 of the Act (15 U.S.C. 79j) or section 2(b) of the Gas Related Activities Act, designate as gas-related for purposes of this section.

(3) The term *aggregate investment* shall mean all amounts invested or committed to be invested in energy-related companies, for which there is recourse, directly or indirectly, to the registered holding company.

(c) *Report on Related Business Activities.* Within 60 days following the end of the first calendar quarter in which any acquisition that is exempt under this section is made, the registered holding company shall file (and thereafter continuously file) with this Commission and with each state commission having jurisdiction over the retail rates of the public-utility subsidiary companies of such registered holding company a Certificate of Notification on Form U–9C–3 (§ 259.208 of this chapter).

PART 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

5. The authority citation for part 259 continues to read as follows:

Authority: 15 U.S.C. 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q and 79t.

6. Section 259.208 is added to read as follows:

259.208 Form U–9C–3, for notification of acquisition of securities exempt from section 9(a) pursuant to rule 58 (§ 250.58 of this chapter).

This form shall be filed pursuant to rule 58(c) (§ 250.58(c) of this chapter) as the certificate of notification of the acquisition of securities exempted from the application of section 9(a) of the Act pursuant to rule 58 (§ 250.58 of this chapter).

[**Editorial Note:** The text of Form U–9C–3 appears in the Appendix to this document and will not appear in the Code of Federal Regulations.]

Dated: June 20, 1995.

By the Commission.

Margaret H. McFarland

Deputy Secretary.

Note: This form will not appear in the Code of Federal Regulations.

Appendix—United States Securities and Exchange Commission

Washington, DC 20549

Form U–9C–3

Quarterly Report of Investments in Companies Engaged in Certain ''Energy-Related'' and ''Gas-Related'' Businesses

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Name and Address of Registered Holding Company

General Instructions

1. Use of Form

A quarterly report containing the information required by Form U–9C–3 shall be filed by a registered holding company with the Commission and with each state public-utility commission that has jurisdiction over the retail rates of a public-utility subsidiary company of the registered holding company. The report shall be filed within 60 days following the end of each calendar quarter commencing with the first calendar quarter in which such registered holding company directly or indirectly acquires any securities of any energy-related or gas-related company in reliance upon the exemption afforded by rule 58, 17 CFR 250.58.

2. Formal Requirements

(a) Two copies of the report on this form, including the exhibits specified, shall be filed with the Commission, and one copy, with exhibits, shall be filed with each of the appropriate state commissions. At least one of the copies filed with the Commission shall be manually signed and filed at the place designated by the Commission for filings under the laws it administers. The second copy shall be addressed to the Division or Office responsible for administering the Act.

(b) The quarterly report, and where practicable all documents filed as a part thereof, shall be on good quality, unglazed white paper, 8½'' × 11'' in size. All papers included in the quarterly report, except exhibits not especially prepared for such purpose, shall have a margin of at least 1½'' for binding, and each copy should be firmly bound on the left side.

(c) The report shall contain the item number and caption of each item in the form, but shall omit all instructions and text. If any item is inapplicable or the answer thereto is negative, it shall be so stated.

(d) The report shall identify and provide a telephone number for a person to whom inquiries concerning the contents of the report may be directed.

3. Definitions

All terms used in this form and the instructions have the same meaning as in the Public Utility Holding Company Act of 1935, as amended, and the rules and regulations thereunder, particularly rule 58, 17 CFR 250.58.

Item 1.

Identify the name and describe the nature of the business of each newly formed energy-related or gas-related company whose securities were acquired during the calendar quarter.

Item 2.

Provide the amount and type (*e.g.*, equity or debt) of capital invested in each energy-related or gas-related company. Identify whether the investment is held by the top holding company or a subsidiary thereof (other than an energy-related or a gas-related subsidiary company). If any institutional third party financings were used or undertaken to finance the acquisition or ongoing business of any such company, identify (a) the name of the institution, bank, or other third party; (b) the amount and type of

investment; and (c) the cost of capital terms.

Item 3.

For each energy-related and gas-related company in which the registered holding company has invested, directly or indirectly, provide a balance sheet and a twelve months' ended income statement.

Item 4.

Aggregate Investment Analysis:

(a) State the total investment during the quarter of the registered holding company or any subsidiary thereof in all energy-related companies.

(b) If the total investment disclosed in Item 4(a) is greater than $50 million, state it as a percentage of the registered holding company's consolidated capitalization (as reported in the registered holding company's most recent Form 10–K or Form 10–Q filed under the Securities Exchange Act of 1934).

(c) State the aggregate investment to date of the registered holding company or any subsidiary thereof in all energy-related companies.

(d) If the aggregate investment disclosed in item 4(c) is greater than $50 million, state it as a percentage of the registered holding company's consolidated capitalization (as reported in the registered holding company's most recent Form 10–K or Form 10–Q filed under the Securities Exchange Act of 1934).

(e) State the aggregate investment by any registered gas utility holding company in all ''gas-related'' companies.

Item 5.

For each quarter following the calendar quarter, provide a narrative description of (a) any new activities within the scope of rule 58(b)(1) undertaken during the quarter by existing subsidiary companies; (b) any services, goods, construction, or other property sold to or purchased from any associate public utility company or service company during the quarter by any energy-related or gas-related subsidiary company, and costs billed therefor, together with a copy of the related contract.

Exhibit A

For each calendar year, provide as an attachment to the first quarterly report an organizational chart of the holding company system that includes the percentage owned of each energy-related or gas-related subsidiary company of the registered holding company.

Signature

The undersigned company has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized pursuant to the requirements of the Public Utility Holding Company Act of 1935, as amended.

_____

(Date)

_____

(Company)

_____

By:_____

(Type or Print Name and Title)

[FR Doc. 95–15838 Filed 6–27–95; 8:45 am]

BILLING CODE 8010–01–P